

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**DYAMONE WHITE; DERRICK
SIMMONS; TY PINKINS;
CONSTANCE OLIVIA SLAUGHTER
HARVEY-BURWELL**

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:22-cv-00062-SA-JMV

**STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES
*in his official capacity as Governor of
Mississippi; LYNN FITCH in her
official capacity as Attorney General of
Mississippi; MICHAEL WATSON in
his official capacity as Secretary of
State of Mississippi***

DEFENDANTS

**DEFENDANTS' MOTION FOR PAYMENT OF FEES AND COSTS
ACTUALLY INCURRED AS A RESULT OF PLAINTIFFS'
IMPROPER EXPERT REBUTTAL DISCLOSURES**

COME NOW the defendants, State Board of Election Commissioners, Tate Reeves, in his official capacity as Governor of Mississippi, Lynn Fitch, in her official capacity as Attorney General of Mississippi, and Michael Watson, in his official capacity as Secretary of State of Mississippi, (hereinafter collectively "Defendants") by and through counsel, and pursuant to this Court's April 14, 2023, order [Dkt. #140], FED. R. CIV. P. 37(c)(1)(A),(C), and FED. R. CIV. P. 26(b)(4)(E)(i), file this their motion for payment of fees and costs actually incurred as a result of Plaintiffs' improper expert rebuttal disclosures, and in support thereof would show unto the Court the following:

1. Pursuant to this Court's April 14, 2023, order [Dkt. #140] and FRCP 37(c)(1)(A),(C), the Court should order Plaintiffs to pay the sum of \$120,449.27 to Defendants as

reimbursement of reasonable fees and costs that Defendants actually incurred solely as a result of the improper expert rebuttal disclosures of two of Plaintiffs' experts, Dr. Burch and Dr. Orey.

2. This is a Section 2 Voting Rights Act case that is set for trial in May 2024. Plaintiffs, who are backed by the ACLU and the Southern Poverty Law Center, challenge the lines of the Central District for electing justices to the Mississippi Supreme Court.

3. On April 14, 2023, this Court entered its *Order Denying Motion to Strike on Satisfaction of Conditions* [Dkt. #140], in which the Court found that rebuttal disclosures submitted by Dr. Burch and Dr. Orey did not constitute proper expert rebuttal or supplementation. *See* Dkt. #140 at 7-8. The Court accordingly held that to avoid having these improper rebuttal disclosures stricken by the Court, Plaintiffs would be required to stipulate to the payment of Defendants' "reasonable expert fees and costs actually incurred by Defendants in having their experts respond to the untimely rebuttal opinions of Drs. Burch and Orey." Dkt. #140 at 13. Plaintiffs so stipulated. Defendants now seek to recover their reasonable fees and costs actually incurred solely as a result of Plaintiffs' improper rebuttal disclosures.

4. All of the fees and costs for which recovery is sought herein are associated with the preparation of surrebuttal expert reports by Defendants' testifying experts, Dr. Swanson and Dr. Bonneau, and their subsequent surrebuttal depositions (and related follow-up work) taken at the instance of Plaintiffs' counsel in late September and early October 2023. But for the improper rebuttal disclosures of Dr. Burch and Dr. Orey, Defendants would not have incurred any of the fees and costs for which recovery is sought in this motion.

5. Defendants adopt and incorporate by reference, as if fully and completely set forth herein, the arguments and authorities set forth in the *Memorandum of Authorities in Support of*

Defendants' Motion for Payment of Fees and Costs Actually Incurred as a Result of Plaintiffs' Improper Expert Rebuttal Disclosures, being filed contemporaneously herewith.

6. On the basis of the grounds asserted herein and as further set forth in the aforementioned memorandum of authorities, the Court should award Defendants the sum of \$120,449.27 as reimbursement for reasonable expert and attorney's fees and costs actually incurred as a result of Plaintiffs' improper rebuttal disclosures.

7. In further support of their motion, Defendants submit the following:

Exhibit "A" 4/18/2023 E-mail from Mr. Savitzky to Judge Virden

Exhibit "B" Surrebuttal Report of Dr. Swanson

Exhibit "C" Surrebuttal Report of Dr. Bonneau

Exhibit "D" Itemizations of Expert Fees – Dr. Swanson and Mr. Bryan (composite)

Exhibit "E" Itemization of Expert Fees – Dr. Bonneau

Exhibit "F" Itemization of Deposition Fees/Expenses – Dr. Bonneau

Exhibit "G" Declaration of Michael B. Wallace

Exhibit "H" Itemization of Post-Deposition Expenses – Dr. Bonneau

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court make and enter its Order (1) granting Defendants' motion for payment of fees and costs actually incurred as a result of Plaintiffs' improper expert rebuttal disclosures; and (2) directing Plaintiffs to tender payment, within 10 days of entry of this Court's order granting the instant motion, of the sum of \$120,449.27 to the law firm of Wise Carter Child & Caraway, P.A., in payment of the aforesaid fees and costs actually incurred by Defendants.

THIS the 21st day of November, 2023.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS, TATE REEVES, IN HIS
OFFICIAL CAPACITY AS GOVERNOR OF
MISSISSIPPI, LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
MISSISSIPPI, AND MICHAEL WATSON, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE OF MISSISSIPPI, DEFENDANTS

By: LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: s/Rex M. Shannon III
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AS GOVERNOR OF MISSISSIPPI, LYNN
FITCH, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MISSISSIPPI, AND
MICHAEL WATSON, IN HIS OFFICIAL

CAPACITY AS SECRETARY OF STATE OF
MISSISSIPPI

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for the above-named State Defendants, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 21st day of November, 2023.

s/Rex M. Shannon III
REX M. SHANNON III